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S.F. No. 1572 - Occupational therapist licensure compact establishment

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Date: March 5, 2024

Bill Overview

S.F. 1572 enacts the occupational therapy licensure compact, and provides the compact language. The compact becomes effective once there are ten member states that have enacted its provisions. The compact's language creates a regulatory "Occupational Therapy Compact Commission" which has oversight, rulemaking, and enforcement authority described in the bill. Licensees authorized under the compact have "compact privilege," which is defined to mean "the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or work as an occupational therapist assistant in the remote state under its laws and rules."

Section Summaries

Section 1 (adds Minn. Stat. § 148.645) This section enacts the occupational therapy licensure compact into Minnesota law, in the form described below.

Form of Compact

ARTICLE 1: Purpose

This article describes the purpose of the compact as facilitating interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. It identifies the following six objectives:

1. increase public access to occupational therapy services by providing for the mutual recognition of other member state licenses;
2. enhance the states' ability to protect the public's health and safety;

3. encourage the cooperation of member states in regulating multistate occupational therapy practice;
4. support spouses of relocating military members;
5. enhance the exchange of licensure, investigative, and disciplinary information between member states;
6. allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and
7. facilitate the use of telehealth technology in order to increase access to occupational therapy services.

ARTICLE 2: Definitions

This article defines key terms for the compact, including but not limited to, the following: Adverse action, compact privilege, executive committee, home state (“the member state that is the licensee's primary state of residence”), licensee, member state (“a state that has enacted the compact”), party state (“any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege”), occupational therapist, occupational therapy assistant, occupational therapist assistant, and remote state (“a member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege”).

ARTICLE 3: State Participation in the Compact

This article establishes requirements for a state to participate in the compact. Such requirements include, but are not limited to, the following:

- Full participation in the commission’s data system;
- Having a mechanism to receive and investigate complaints about licensees;
- Providing notification to the commission of any adverse action regarding a licensee;
- Compliance with commission rules; and
- Having continuing competence requirements as a renewal condition.

This article further provides that a member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules, and that member states may charge a fee for granting a compact privilege. It clarifies that nothing in the compact affects a member state’s requirements for the issuance of a single-state license.

ARTICLE 4: Compact Privilege

This article enumerates the following ten requirements for a licensee to exercise the compact privileges:

1. hold a license in the home state;
2. have a valid social security number or national practitioner identification number;
3. have no encumbrance on any state license;
4. be eligible for a compact privilege in any member state in accordance with specified paragraphs of the compact;
5. have not had any adverse action against any license or compact privilege within the previous two years;
6. notify the commission that the licensee is seeking the compact privilege within a remote state or states;
7. pay any applicable fees, including any state fee, for the compact privilege;

8. pass a criminal background check;
9. meet any jurisprudence requirements established by the remote state or states in which the licensee is seeking a compact privilege; and
10. report to the commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

This article further provides that the compact privilege is valid until the home license expires, and that a licensee providing occupational therapy in a remote state is subject to that state's regulatory authority.

ARTICLE 5: Obtaining a New Home State License by Virtue of Compact Privilege

This article permits an occupational therapist or occupational therapy assistant to, if the professional moves to a different member state, obtain a new home state license in their new state of residence. The article identifies various procedural steps to obtain the license, however, including a criminal background check and completion of an application.

ARTICLE 6: Active Duty Military Personnel or Their Spouses

This article provides that active duty military personnel, or their spouses, must designate a home state where the individual has a current license in good standing. It permits the professional to retain that home state designation during the period the service member is on active duty.

ARTICLE 7: Adverse Actions

This article identifies the rights of home states, member states, and remote states with respect to adverse action against licensees. Specifically, it provides that a home state shall have exclusive power to impose adverse action against a license issued by the home state.

In addition, a member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its own procedures for taking the adverse action, and, if otherwise permitted by state law, may recover from the affected occupational therapist or occupational therapy assistant the costs of investigations and disposition of cases resulting from any adverse action taken against that occupational therapist or occupational therapy assistant.

A remote state has the authority to: (1) take adverse actions against a licensee's compact privilege within the state; and (2) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence.

ARTICLE 8: Establishment of the Occupational Therapy Compact Commission

This article establishes a joint public agency known as the Occupational Therapy Compact Commission. It further details the venue and jurisdiction of the commission with respect to compact disputes; provides membership, voting, and meeting requirements of the commission; identifies the powers and duties of the commission; provides for delegates to the board; and permits certain qualified immunity, defense, and indemnification rights for commission members, officers, and employees.

The powers and duties of the commission identified in this article include the following 18 items:

1. establish a code of ethics for the commission;
2. establish the fiscal year of the commission;
3. establish bylaws;
4. maintain its financial records in accordance with the bylaws;
5. meet and take such actions as are consistent with the provisions of this compact and the bylaws;
6. promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states;
7. bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state occupational therapy licensing board to sue or be sued under applicable law shall not be affected;
8. purchase and maintain insurance and bonds;
9. borrow, accept, or contract for services of personnel, including but not limited to employees of a member state;
10. hire employees; elect or appoint officers; fix compensation; define duties; grant such individuals appropriate authority to carry out the purposes of the compact; and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
11. accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services and receive, utilize, and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;
12. lease; purchase; accept appropriate gifts or donations of; or otherwise to own, hold, improve, or use any property, real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety;
13. sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
14. establish a budget and make expenditures;
15. borrow money;
16. appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
17. provide and receive information from, and cooperate with, law enforcement agencies;
18. establish and elect an executive board; and
19. perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of occupational therapy licensure and practice.

ARTICLE 9: Data System

This section requires member states to submit a data set to the data system, maintained by the commission, on all individuals to whom the compact applies. The data must include, but is not limited to, identifying information, licensure data, adverse actions against a licensee, and “other information that may facilitate the administration of this compact, as determined by the rules of the commission.” The article further clarifies, however, that member states may designate information that may not be shared with the public without the express permission of the contributing state.

ARTICLE 10: Rulemaking

This article specifies the compact’s rulemaking procedure and authoritative effect of such rules. Notably: (1) if a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state; (2) rules or amendments to the rules shall be adopted at a regular or special meeting of the commission; (3) prior to promulgation and adoption of a final rule or rules by the commission and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking; (4) prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public; and (5) the commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

ARTICLE 11: Oversight, Dispute Resolution, and Enforcement

This article requires the executive, legislative, and judicial branches of state government in each member state to enforce this compact and take all actions necessary to effectuate the compact's purposes. It further outlines procedures upon the default of a member state, with respect to the performance of the state’s duties under the compact, and provides for training and technical assistance in connection with such defaults.

The article specifies that termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

In addition, this article provides for dispute resolution procedures and enforcement. Permissible enforcement under the compact includes that: (1) the commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact; and (2) by majority vote, the commission may initiate legal action against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The commission may pursue any other remedies available under federal or state law.

ARTICLE 12: Date of Implementation of the Interstate Compact for Occupational Therapy Practice and Associated Rules, Withdrawal, and Amendments

This article states that the compact is effective when the compact statute is enacted into law by the tenth member state, and that any member state may withdraw from this compact by enacting a statute repealing the same. This article requires that, for the compact to be amended, the amendment must be enacted into the laws of all member states.

ARTICLE 13: Construction and Severability

This article provides that the compact language should be liberally construed to effectuate its purposes, and that its provisions are severable.

ARTICLE 14: Binding Effect of Compact and Other Laws

This article requires a licensee providing occupational therapy in a remote state under the compact privilege to function within the laws of the remote state. It clarifies that nothing in the compact prevents the enforcement of any other law of a member state that is not inconsistent with the compact. This article further provides that the terms of the compact take legal precedence over any member state laws in conflict with the compact.